## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOHNIE B. ERWIN, JR.,	)	
	)	
Petitioner,	)	
	)	
<b>v.</b>	)	1:05CV00068
	)	
DON WOODS,	)	
Superintendent, et al.,	)	
	)	
Respondents.	)	

## O-R-D-E-R

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on June 24, 2005, was served on the parties in this action. Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

**IT IS THEREFORE ORDERED** that Respondent's motion to dismiss Petitioner's habeas corpus petition as time-barred [Pleading No. 3] be **GRANTED**, that Petitioner's petition for writ of habeas corpus [Pleading No. 1] be **DENIED**, and that this action be dismissed with prejudice.

**IT IS FURTHER ORDERED** that Petitioner's motion to compel [Pleading No. 8]

be **DENIED** for lack of good cause.

A judgment dismissing this action will be entered contemporaneously with this Order.

Finding no substantial issue for appeal concerning the denial of a constitutional right

affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is

not issued.

Date: September 29, 2005

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